IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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R.S.A. No.156 of 1986
Date of Decision:19.04.2007

Didar Singh (died) through his LRs, namely,
(a) Harbans Kaur (b) Simranjit Kaur (c) Paramjit Kaur
(d) Harjinder Kaur(e) Paramjit Singh and (f)Daljit Kaur

.....Appellants

Vs.

Jalandhar Improvement Trust, Jalandhar

.....Respondent

CORAM:- HON'BLE MR. JUSTICE RAJESH BINDAL

Present:- Mr. B.S.Wasu, Advocate for the appellant.

Mr. S.C.Pathela, Advocate for the respondent.

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Rajesh Bindal, J.

This is plaintiff's second appeal against the judgment and decree of the Courts below whereby the suit for declaration to the effect that the cancellation of allotment of plots No.59 and 60 in 55 Acres Development Scheme of Police Lines Road, adjoining Commissioner's Office, Jalandhar in favour of the plaintiff as local displaced person is illegal and arbitrary, was dismissed by both the Courts below.

At the time of hearing, learned counsel for the appellant framed following substantial questions of law which arise out of the order of the learned First Appellate Court for determination by this Court:-

> "1. Whether the appellant's allotment which was in pursuance of the concluded contract can be rescinded unilaterally by the respondent- Improvement Trust especially after taking benefit under the said contract?
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> 2. Whether the definition of a Local Displaced Person as defined in Section 2(a) of the Utilisation of Land and Allotment of Plots by Improvement Trust Rules, 1975 (hereinafter referred to as `1975 Rules') would apply to the facts of the present case in the light of the fact that the appellant's allotment was in pursuance of acquisition of 1966 when the said Rules were not even in existence?

3. Whether the contract between the appellant and the respondent- Improvement Trust can be said to be void even if it is in violation of 1975 Rules, if the said Rules do apply to the present case?
4. Whether the respondent- Improvement Trust is estopped from cancelling the appellant's allotment after taking possession of 72 kanals of land from the appellant on the well settled principle of promissory estoppel?
5. Whether the appellant's allotment can be cancelled by the respondent- Improvement Trust by passing a cryptic and non speaking order which is legally unsustainable as the same is in contravention of the principles of natural justice?"

Briefly the facts, as noticed in the judgment of the First Appellate Court, are that the respondent proposed a 55 Acre Development Scheme of Police Lines Road, adjoining Commissioner's Office, Jalandhar. Late Shri Didar Singh was in possession of land measuring 72 kanals for the last more than 30 years where he had installed a tubewell also. He was approached by the Trust to hand over the possession of the land and in lieu thereof he was promised two plots, measuring one kanal in total, for his rehabilitation as a local displaced person. Accordingly, on the application of the appellant (since died) now represented through LRs, he was allotted plots No. 59 and 60 measuirng 10 marla each on 10.3.1980 (Ex.P.6). The possession was also delivered to him. However, vide memo dated 21.3.1980, the appellant was informed by Chairman of the Trust that memo dated 10.3.1980, whereby two plots were shown to have been allotted to the appellant, was sent to him inadvertently and in fact only one plot of 10 marla bearing No. 60 (letter dated 21.3.1980 Ex.P.7) is allotted to him. In consequence to the allotment, the appellant deposited a sum of Rs. 5,500/- with the Trust on 18.4.1980 (Ex.P.5). Before the appellant could deposit the balance amount for allotment, the appellant was informed by memo dated 19.3.1981 that the allotment of plots No. 59 and 60 made to the appellant has been cancelled (Ex.P.13). This cancellation was challenged by the appellant by filing the civil suit, which was dismissed by the trial Court. In further appeal before the First Appellate Court also, the appellant

failed.

I have heard learned counsel for the parties and with their assistance have perused the paper book. Primary contention raised by learned counsel for the appellant is that he was in possession of the land measuring 72 kanals, which was acquired by the Trust for 55 Acres Development Scheme of Police Lines Road, adjoining the Commissioner's Office, Jalandhar. The possession of the land was surrendered by the appellant to the Trust with the understanding that two plots, measuring one kanal in total, in lieu thereof were agreed to be allotted to the appellant. To that effect a resolution of the Trust was also passed on 7.3.1980, as is found referred to in document Ex.P.4, extract thereof is as under:-

> "Plots No.59 and 60 in 55 Acre Development Scheme (L.D.P.) were allotted to Shri Vaid Hem Raj and Shri Ramesh Kumar on 3.3.1980 but there is a tubewell belonging to Shri Didar Singh in these plots. Besides this, he has handed over the possession of 72 kanal 13 marlas of land as per mutual agreement. As per the decision taken in meeting of the Trust held on 6.3.1980 that the land consisting of one kanal where his tubewell is installed, may be allotted to Shri Didar Singh with the approval of Punjab Government. Therefore, plots No.59 and 60, after cancellation, may be allotted to Shri Didar Singh and the approval may be given for alloting plots No.85 and 86 to Shri Vaid Hem Raj and Shri Ramesh Kumar."

In terms of the decision of the Trust, the appellant having been allotted plots No. 59 and 60, any action on the part of the Trust in cancelling the same vide memo dated 21.3.1980 is totally illegal and arbitrary besides being violative of principles of natural justice as no opportunity of hearing was afforded to the appellant before taking such an action. It was contended by learned counsel for the appellant that in fact the action of the Trust is barred by principles of promissory estoppel also as the appellant was promised allotment of plots measuring one kanal in lieu of his surrender of possession of 72 kanals of land in his possession for thirty years, though as a tenant. It is further submitted that in fact a concluded contract had come into existence between the parties and the Trust should not be permitted to back out therefrom. It is also submitted that the

communication dated 21.3.1980 is bad in law as no reason for cancellation of the allotment are forthcoming and the same cannot be supplemented later on by way of written statement or any other document. Still further, it is submitted that the equity is also in favour of the appellant as after the allotment having been made in his favour and part of the allotment price having been paid, the appellant had raised construction on the plot, besides the fact that the basic consideration for allotment of plots to the appellant at the relevant time was that he was in occupation of the land for the last about 30 years and his tubewell was installed on the plots in question, which were allotted to him.

On the other hand, learned counsel for the Trust submitted that as far as plot No.59 is concerned, though initially the allotment was made to the appellant on 10.3.1980, the same was cancelled on 21.3.1980 and even no payment was received by the Trust on that account. However, as far as allotment of Plot No.60 is concerned, it could not be disputed that a sum of Rs. 5,500/- was paid by the appellant on that account. His further contention is that the allotment could be made to the appellant only in terms of the Jalandhar Improvement Land Disposal Rules, 1954 (as amended from time to time) read with Utilisation of Land and Allotment of Plots by Improvement Trust Rules, 1975. In terms of above mentioned Rules, allotment of a plot could be made only to a displaced person who had to be an owner of the land acquired by the Trust. However, it is not pleaded that he was given any concession in the price of the land. Only preferential allotment was given. As the appellant was not owner of the land though was in possession of the land for the last 30 years, he being ineligible could not be allotted the plot. There being an error, the same was corrected. However, he could not dispute the fact that neither any opportunity of hearing was afforded to the appellant before taking the drastic act of cancellation of allotment nor that the reasons for allotment are not forthcoming in the impugned communication dated 21.3.1980.

Having heard learned counsel for the parties and perusing the material on record, I am of the considered view that the action on the part of the respondent- Trust deserve to be set aside and the plaintiff- appellant is entitled to the declaration prayed for. Once by conscious decision taken by the Trust in its meeting, by passing a resolution to allot two plots bearing

Nos.59 and 60 to the appellant, the allotment having been made thereafter and the appellant having been put in possession of the plots on which he has claimed to have raised construction, the allotment could not have been cancelled unilaterally by the respondent without affording an opportunity of hearing to the appellant. However, this Court finds that though initially two plots were allotted to the appellant bearing Nos.59 and 60, however, allotment of one plot bearing No.59 was withdrawn immediately vide memo dated 21.3.1980 and against this the appellant did not even deposit any amount. However, as far as plot No.60 is concerned, the appellant had deposited a sum of Rs. 5,500/- in terms of the allotment made. The impugned communication not only being violative of principles of natural justice is also lacking reasons to justify the cancellation of plots allotted to the appellant. Though as per the Jalandhar Improvement Land Disposal Rules, 1954 (as amended from time to time) read with Utilisation of Land and Allotment of Plots by Improvement Trust Rules, 1975, the appellant may not strictly fall within the terms Displaced Person but, however, keeping in view the totality of circumstances especially the resolution of the Trust herein under special circumstances and on consideration of peculiar facts, a resolution was passed for allotment of two plots measuring one kanal in total to the appellant. Even if the appellant was not strictly eligible as per the Rules being a displaced person, the allotment was made to the appellant for a price under special circumstances. However, the appellant having paid amount only against plot bearing No.60 at the relevant time and the allotment of plot No.59 having been withdrawn immediately after allotment and still further the appellant having raised construction on the plot in question, the ends of justice in the present case would be met in case the allotment of plot No. 60 only in favour of the appellant, measuring 10 marla, is preserved and the suit of the plaintiff is decreed to that extent by reversing the judgment and decree of both the Courts below.

The appeal is disposed of in the manner indicated above.

April 19 , 2007 **(RAJESH BINDAL)**
renu **JUDGE**